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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

DANIEL KEEN,

Respondent.

Appeal from the Superior Court of Washington for Lewis County
Case No. 18-1-00889-21

Appellant/Cross-Respondent's Opening Brief

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when in entering findings of fact 1.6, that K.J.M. was interviewed multiple times by, including her primary initial interview and a later contact with then Detective Rick Silva who later died years later but years before this case was charged.
2. The trial court erred when in entering findings of fact 1.13, that Chehalis Police Department was unsuccessful in obtaining a DNA sample from Kyle Teagle because he left the state after being interviewed due to reasons unrelated to the investigation.
3. The trial court erred when in entering findings of fact 1.23, that [b]etween November 27 and December 29, 2017, the Prosecutor and the CPD had communication where the Prosecutor requested the CPD to locate and contact the alleged victim and see if she still wanted the case prosecuted. This was accomplished and the case was sent for charging at the end of 2017.
4. The trial court erred when in entering findings of fact 1.29, that defense investigator began investigation in an effort to locate critical witnesses.
5. The trial court erred when in entering findings of fact 1.30, that during the pendency of the case the State could never physically locate Kimberly Woo.
6. The trial court erred in entering conclusion of law 1.2(a), that preaccusatorial delay caused actual and significant prejudice to Keen and violated his due process rights in that Kimberly Woo and Kyle Teagle were not located by the State prior to filing the case after a nearly 10 year delay from the initial investigation and Ms. Woo's and Mr. Teagle's ability to be located and questioned were significantly compromised by the delay and their testimony is highly relevant.
7. The trial court erred in entering conclusion of law 1.2(b), that preaccusatorial delay caused actual and significant prejudice

the employees and/or other witnesses at the Chevron were also compromised by the delay and would offer relevant evidence regarding the interaction of the parties including their levels of intoxication.

8. The trial court erred in entering conclusion of law 1.2(c), that preaccusatorial delay caused actual and significant prejudice to Keen and violated his due process Wendy Johnson's location and availability were compromised irreparably due to the delay, and information Ms. Johnson would provide in advance of trial and during trial would be relevant beyond merely foundational issues, as Ms. Johnson collected evidence, interviewed K.J.M. during the rape kit process, and used certain protocols while obtaining critical evidence.
9. The trial court erred in entering conclusion of law 1.4, that the cumulative effect of all of the loss of evidence in conclusion of law 1.2 constitutes actual and significant prejudice.
10. The trial court erred in entering conclusion of law 1.6, that in weighing the reasons for the delay, that there was none, and the prejudice, the balancing test falls squarely in favor of the Defendant, in that the fundamental concepts of justice would not be met if the case was allowed to proceed.
11. The trial court erred in entering conclusion of law 1.7, that under CrR 8.3(b), the government committed governmental mismanagement of its case for the reasons stated in the above conclusions of law, and offered no reasonable explanation for the preaccusatorial delay.
12. The trial court erred in entering conclusion of law 1.8, that government mismanagement of the case has prejudiced Keen's right to a fair trial, given the current speedy trial and current trial date, as well as the enormity of the charge and evidence that still to date cannot be produced due to preaccusatorial delay, Keen would be forced to face a *Hobson's choice* between his right to properly defend himself and his right to a speedy trial.
13. The trial court erred when it dismissed the State's case with prejudice for due process violations due to preaccusatorial

delay which caused actual prejudice to Keen and for which no reason was provided that justifies the case proceeding.

14. The trial court erred when it dismissed the State's case with prejudice for governmental mismanagement of the case for which no reason was provided that prejudiced Keen's right to a fair trial.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- A. Did Keen fail to establish he suffered actual prejudice from preaccusatorial delay, and therefore the trial court erroneously dismiss Keen's case for violation of Keen's due process rights because of the preaccusatorial delay?
- B. Did the trial court abuse its discretion when it granted Keen's motion to dismiss with prejudice pursuant to CrR 8.3(b) based upon alleged actual prejudice suffered from the preaccusatorial delay, which was classified as governmental mismanagement?

III. STATEMENT OF THE CASE

K.J.M.¹ reported a sexual assault to the Chehalis Police Department (PD). Chehalis Officer Hoium later picked up K.J.M.'s sexual assault kit, suspecting two people: Kyle Teagle and the defendant Daniel Keen. The Centralia PD investigated several leads, with Mr. Teagle as their primary suspect, but left the case alone in 2010 after Mr. Teagle disappeared out of state and Keen refused a

¹ The State will refer to the victim by her initials throughout its briefing. The State acknowledges that the victim's full name has been used in this record, but the undersigned DPA believes that it is appropriate to use a sexual assault victim's initials in all pleadings.

DNA test. The Centralia PD reviewed the case again in 2017, and got a DNA warrant for Keen, linking him to the assault.

A. K.J.M. REPORTS HER JULY 4, 2009 SEXUAL ASSAULT TO OFFICER HOIUM.

On July 5, 2009, Providence Centralia Hospital Emergency Room staff informed Chehalis patrol that a woman, later identified as K.J.M., reported that someone sexually assaulted her at her 73 SW Saunders residence in Chehalis, Washington. CP 24.

Chehalis Officer Hoium responded first and contacted K.J.M. at the hospital. *Id.* K.J.M. told Officer Hoium that she was with her friend Kimberly Woo at Centralia's Hub Tavern late July 3rd, until they left around 2:00 a.m. on July 4th. *Id.* K.J.M. said that she was very intoxicated, and that she and Ms. Woo left with two men they did not know who asked them for a ride. CP 24-25. K.J.M. continued: she, Ms. Woo, and the two other men got into her Jeep, and she drove them to the local Chevron to get some food. CP 25.

K.J.M. said she then felt too intoxicated to drive, and got into the backseat with another man while someone else drove. *Id.* K.J.M. stated that she passed out in the Jeep's rear, that she woke up, opened the Jeep door and vomited, that the man in the backseat put his fingers inside of her vagina, and that she passed out again. *Id.*

K.J.M. said she remembered being in her 73 Saunders home, that a man with a black hat and white shirt tried to put his penis in her mouth, she swatted him away, she awoke later that day with no one around, her “butt hurt,” and there was “fluid coming from her butt.” Id.

Officer Hoium later picked up the sexual assault evidence kit from RN Wendy Johnson at Centralia Providence Hospital. CP 25-26. He also collected K.J.M.’s clothing from the evening of the reported sexual assault. CP 26.

B. SERGEANT McNAMARA INVESTIGATES MULTIPLE LEADS IN K.J.M.’S CASE.

a. Kimberly Woo.

Centralia PD assigned Sergeant McNamara to K.J.M.’s case, and he followed up with K.J.M. and Ms. Woo. CP 27-39. Sergeant McNamara took Ms. Woo’s statement, which differed in parts from a statement she had given Officer Elder the previous day. CP 26-29. Ms. Woo explained that she and K.J.M. had met two men at the Hub Tavern and K.J.M. hit it off with one of the men and wanted him to come home with her. CP 27-28.

Ms. Woo also corroborated that K.J.M. drove the Jeep to the Chevron, felt too intoxicated afterwards, and that the man K.J.M. wanted to take home drove her Jeep back to their residence. CP 28. Ms. Woo explained on the way back home, K.J.M. started vomiting

out the window of the Jeep and then passed out and would not wake up. *Id.* According to Ms. Woo, K.J.M. was passed out in the Jeep and Ms. Woo was unable to wake her up, so Ms. Woo left K.J.M. in the Jeep with the one man, while Ms. Woo went inside the house with the other man, who matched Kyle Teagle's description. *Id.* Ms. Woo classified both men as drunk gropers. *Id.* Sergeant McNamara found out that "Kyle" was wearing a black baseball cap, a "Tapout" shirt, khaki cargo shorts, and tennis shoes. *Id.*

b. Hub Tavern And Chevron.

Sergeant McNamara then spoke to witnesses, attempting to find Kyle. RP 29-30. Sergeant McNamara contacted the Hub Tavern and requested their security video. Hub Tavern staff said that the owner would pull the video, but later they said that they did not have the video for that night. CP 30. Next, Sergeant McNamara went to the local Chevron and requested their security footage, which he received. CP 30-31. The security video shows K.J.M., Ms. Woo, and two white males, and their activities in and around the store. CP 30-31. Sergeant McNamara went back to the Hub Tavern and spoke to the bartenders, attempting to identify the men in the video. RP 31.

c. Daniel Keen.

Keen, who was one of the men in the Chevron video, happened to walk into the Chehalis PD on July 23, 2009. CP 31. Sergeant McNamara asked Keen if he would be willing to speak to Sergeant McNamara about the night of July 3rd-4th and meeting two women at the Hub Tavern. CP 31-32. Keen agreed to speak to Sergeant McNamara, explaining that he and Kyle Teagle met the two woman at the Hub Tavern, they left together, stopped at a house, then the Chevron, then back to a house in Chehalis. CP 32. Keen stated that one of the women drove, and he and Kyle were only passengers. *Id.* Keen explained that the woman in the skirt (Ms. Woo) was messing around with Mr. Teagle, so he and K.J.M. went out to the vehicle and were making out. *Id.* Keen said he did not recall having sex with K.J.M., but that he did have his hands in her pants and penetrated her, though it did not last long because she began vomiting. *Id.*

d. Kyle Teagle.

On August 3, 2009, Sergeant McNamara went to Mr. Teagle's residence to locate and speak with Mr. Teagle. CP 35. However, Mr. Teagle was working in Utah at the time. CP 35. Mr. Teagle later called Sergeant McNamara and gave a statement on the phone

about the events on the night of July 3rd-4th. CP 35-37. Mr. Teagle said that Keen met the two women, K.J.M. and Ms. Woo, decided to leave with them, and dragged Mr. Teagle along. CP 35. Mr. Teagle stated K.J.M. drove to the Chevron, and that Keen drove from the Chevron to the residence in Chehalis. *Id.* Mr. Teagle said K.J.M. was sleeping in the vehicle and Keen stayed with her outside, and Mr. Teagle went inside with Ms. Woo. CP 35-36. Keen then left Mr. Teagle, who later got jumped by two men at the residence. CP 36. Mr. Teagle said he did not report getting beat up or robbed because he had a warrant and did not want to go to jail. *Id.* Mr. Teagle denied any sexual relations with either woman and agreed to voluntarily provide a buccal swab when he got back into town. CP 36-37.

Throughout August 2009, Sergeant McNamara tried to locate Mr. Teagle to get the buccal swab to test his DNA. CP 37. Sergeant McNamara worked on the case through 2009, obtaining DNA samples from K.J.M. and her boyfriend. CP 38-39. In April 2010, Sergeant McNamara conducted a search and found Mr. Teagle now resided in Hawaii. CP 40. Mr. Teagle was the primary suspect. Unable to locate and obtain a DNA sample from Mr. Teagle, Sergeant McNamara set the case aside and it went cold. CP 29-30.

C. CHEHALIS POLICE DEPARTMENT REVISIT K.J.M.'S CASE IN 2017 AND FIND MR. TEAGLE IN WYOMING.

Chehalis PD revisited K.J.M.'s case in 2017, while reviewing all of its cold sexual assault cases. CP 52. Using now better, more expansive social media capabilities, Chehalis PD found Mr. Teagle in Gillette, Wyoming, and he voluntarily provided a DNA sample, collected by a local police agency. CP 40-41. In contrast, Keen again refused to voluntarily provide a sample, and police obtained a search warrant for his DNA sample. CP 41. On November 27, 2017, the Chehalis PD received the results of Keen's DNA testing, conclusively matching Keen's DNA to the sample collected from K.J.M. CP 42.

D. THE STATE CHARGES KEEN WITH RAPE IN THE SECOND DEGREE.

On December 28, 2017, once the Lewis County Prosecuting Attorney's Office received this information, they tasked the Chehalis PD to contact the reported victim, K.J.M., which they did. CP 42-43, 69. K.J.M. responded, saying she would testify. Id.

The State then charged Keen with one count of Rape in the Second Degree on November 8, 2018. CP 1-3. Keen was summoned and appeared for his preliminary appearance, where he was also arraigned on the charge, and a trial date was set on December 18,

2018. CP 78-79. Keen's trial was set for the week of March 4, 2019, with his speedy trial expiration March 18, 2019. CP 79.

E. MR. AUST'S LIMITED INVESTIGATION CONVINCES THE TRIAL COURT TO DISMISS THE CASE.

Keen's attorney hired Steve Aust to conduct an investigation to locate witnesses that they identified as key to their defense and to work on building a motion for a potential due process violation because of the delay in filing of the case. CP 79. Mr. Aust completed a report with his findings. Ex 1. Keen then filed a motion to dismiss based on preaccusatorial delay and CrR 8.3(b). CP 11-53. The State responded. CP 54-72.

The trial court held a hearing, and Mr. Aust and Sergeant McNamara testified. See, RP. Mr. Aust explained that he attempted to contact the witnesses the defense identified as significant, such as Kyle Teagle, Kimberly Woo, the people at the Hub Tavern and the Chevron, and K.J.M.'s neighbors from the July 4, 2009 incident. RP 10-13. Mr. Aust stated he was unable to locate any of these witnesses. Id. Mr. Aust also explained that Chehalis Detective Silva, who had spoken to K.J.M., had died during the delay in filing. RP 13-14. Mr. Aust then told the court that he had called Providence Hospital's HR twice in an attempt to locate Wendy Johnson, the person who collected the DNA rape kit. RP 14. Providence told Mr.

Aust they were not able to locate Ms. Johnson. RP 15. According to Mr. Aust, the delay had caused Keen's memory to be substantially impaired. RP 16.

Sergeant McNamara explained that the delay was not strategic or intentional. RP 30. He also acknowledged, in retrospect, that he should have sought a warrant to obtain Keen's DNA when Keen refused to give a sample voluntarily. RP 33-34; Ex. 2.

The trial court granted Keen's motion, dismissing the State's case on both preaccusatorial delay and governmental mismanagement, CrR 8.3(b), grounds. RP 60-65; CP 74-83. Findings of Fact and Conclusion of Law were entered. CP 74-83. The State timely appeals. CP 84-95. Keen filed a notice of cross-appeal. CP 96-107.

The State will further supplement the facts in the argument section below.

IV. ARGUMENT

A. KEEN FAILED TO ESTABLISH HE SUFFERED ACTUAL PREJUDICE FROM THE PREACCUSATORIAL DELAY, THEREFORE THE DISMISSAL OF THE CASE WITH PREJUDICE WAS IN ERROR.

Keen failed to establish he suffered actual prejudice from the preaccusatorial delay. The trial court erroneously concluded Keen was prejudiced by the delay, then used the erroneous conclusion as

a basis to dismiss the case against Keen with prejudice. This Court should reverse the trial court's ruling and remand the matter back to allow the State to pursue its prosecution of Keen for Rape in the Second Degree.

1. Standard Of Review.

Whether a preaccusatorial delay violated due process rights is reviewed de novo. *State v. Oppelt*, 172 Wn.2d 285, 290, 257 P.3d 653, (2011).

2. Substantial Evidence Does Not Support The Challenged Findings Of Fact.

Only findings of fact assigned error by an appellant will be reviewed by the appellate court. *State v. Brockob*, 159 Wn.2d 311, 343, 150 P.3d 59, (2006). "Unchallenged findings of fact are verities on appeal." *State v. Brockob*, 159 Wn.2d at 343. Findings of fact are sufficient if supported by substantial evidence. *Id.* The findings of fact then must support the trial court's conclusions of law. *Id.*

The State assigned error to findings of fact 1.6, 1.13, 1.23, 1.29, and 1.30. Substantial evidence does not support the challenged findings and this Court should find the trial court erred when it entered each challenged finding.

Finding of fact 1.6 states, “The Chehalis Police Department (hereinafter “CPD”) interviewed K.J.M.² multiple times, including her primary initial interview and a later contact with then Detective Rick Silva who died yeas later but years before this case was charged.” CP 76. The finding of fact is inaccurate insofar as it represents that K.J.M.’s primary initial interview and a later contact were conducted by Detective Silva. RP 13-14 CP 24-25, 30. Detective Silva’s only involvement was speaking to K.J.M. on the phone when she called Chehalis Police Department. CP 30. Detective Silva relayed to Sergeant McNamara that K.J.M. was upset and mainly concerned about having Ms. Woo arrested for the theft of K.J.M.’s property. *Id.* Due to K.J.M. and her boyfriend yelling at Detective Silva on the phone, Detective Silva hung up on them. *Id.* Detective Silva did not interview K.J.M., and only spoke to her one time, therefore, as to Detective Silva’s involvement, finding of fact 1.6 is not supported by substantial evidence.

Finding of fact 1.13 states, “The CPD wanted to obtain a DNA sample from Kyle Teagle as their primary suspect, but they were

² The State will change the victim’s name to initials everywhere it appears in the record, including in direct quotations to protect her identity. The prevalence of data mining in today’s computer age demands this type of vigilance. The victim’s initials were not used in the findings of fact and conclusions of law or in the VRP. Any use of the initials is a substitution for the victim’s name in those documents.

unsuccessful in doing so as he had left the state after being interviewed due to reasons unrelated to the investigation.” CP 77. The State only challenges the portion of this finding of fact that Mr. Teagle was in Washington State when he gave his interview to the police, as Mr. Teagle was never in Washington State when contacted by the police in regards to this investigation. RP 28-29; CP 35-37, 40-41. Therefore, the portion of finding of fact 1.13 that states Mr. Teagle left the state is not supported by substantial evidence.

Finding of fact 1.23 states, “Between November 27 and December 29, 2017, the Prosecutor and CPD had communication where the Prosecutor requested the CPD locate and contact the alleged victim and see if she still wanted the case prosecuted. This was accomplished and the case was sent for charging at the end of 2017.” CP 78. The Prosecutor sent the letter requesting contact with K.J.M. and inquiring whether she desired the case to be prosecuted on December 28, 2017. CP 69. Detective Roberts, who had been assigned the matter, then spoke to a deputy prosecutor on December 29th informing him that this had already been accomplished, then noted this in a supplemental report. CP 42-43. The report was not printed until 13:10:54 on 01/05/18. CP 43-44. Therefore, the follow up was requested on December 28, 2017 and

the report was submitted to the Lewis County Prosecutor's Office on January 5, 2018. Finding of fact 1.23 is inaccurate and not supported by substantial evidence.

Finding of fact 1.29 states, "On January 9, 2019, defense investigator Steve Aust began his investigation in an effort to locate critical witnesses and evidence in the case necessary to the defense..." CP 79. The State takes issue with the finding that all the witnesses Mr. Aust was attempting to locate were critical. The conclusions of law entered would reflect the trial court did not find all the witnesses the defense sought to locate "critical." For someone to be critical, they must be crucial or indispensable. Webster's Third International Dictionary, 538 (2002). This over exaggeration of the witnesses' importance makes this portion of finding of fact 1.29 not supported by substantial evidence.

Finding of fact 1.30 states,

During the pendency of the case, defense counsel Shane O'Rourke was in communication with the State discussing the issues including issues related to the location of critical witnesses. During the pendency of the case, the State did not locate Kyle Teagle or Wendy Johnson. The State, through law enforcement, served Kimberly Woo with a subpoena, but could never physically locate her or contact her by phone.

CP 79. The State did not know definitively where Ms. Woo was currently living, but did actually locate Ms. Woo and she was served

her subpoena. RP 54. Therefore, the portion of finding of fact 1.30, stating Kimberly Woo was never physically located is not supported by substantial evidence.

The State will address the challenged conclusions of law throughout its briefing below.

3. Keen Failed To Establish The Preaccusatorial Delay Caused Him To Suffer Actual Prejudice, Therefore, The Trial Court Erred When It Dismissed Keen's Case With Prejudice.

A defendant's due process rights may be violated by preaccusatorial delay even where the charges have been filed prior to the expiration of the statute of limitations. *Oppelt*, 172 Wn.2d at 288-89, citing *United States v. Lovasco*, 431 U.S. 783, 789 97 S. Ct. 2044, 52 L. Ed. 2d. 752 (1977). The court applies a three-pronged test, in which the entire record is examined, to determine if a defendant's due process rights were violated by preaccusatorial delay. *State v. Maynard*, 183 Wn.2d 253, 259, 351 P.3d 159 (2015); *Oppelt*, 172 Wn.2d at 290.

(1) [T]he defendant must show he or she was actually prejudiced by the delay, (2) if the defendant shows actual prejudice, the court must determine the reason for the delay, and (3) the court must weigh the reasons for the delay and prejudice to determine whether fundamental conceptions of justice would be violated by allowing the prosecution.

Maynard, 183 Wn.2d at 259.

The prejudice suffered by a defendant must be actual, it cannot be speculative. *State v. Potter*, 68 Wn. App. 134, 140, 842 P.2d 481 (1992). The defendant must overcome the presumption that a crime charged within the statute of limitations is not prejudicial. *State v. Rohrich*, 149 Wn.2d 647, 658, 71 P.3d 368 (2003). Implicit in the statute of limitations is that a witness's memory will not be stale prior to expiration of the filing deadline. *Rohrich*, 149 Wn.2d at 658. Once the defendant establishes he or she has suffered actual prejudice, "the burden shifts to the State to show the reasons for the delay." *State v. McConnell*, 178 Wn. App. 592, 606, 315 P.3d 586 (2013). The courts distinguish between delays undertaken to gain a tactical advantage and those that are investigatory or administrative in nature. *State v. Alvin*, 109 Wn.2d 602, 606, 746 P.2d 807 (1987) (citations omitted). Negligent conduct causing the preaccusatorial delay may be sufficient to warrant dismissal. *Oppelt*, 172 Wn.2d at 292-96. "If mere negligent conduct is asserted the prejudice suffered by the defendant will have to be greater than where intentional or deliberate government conduct is alleged." *Id.* (quotation cleaned up, citation and internal quotations omitted).

In *Oppelt*, the Supreme Court held a six year preaccusatorial delay did not warrant dismissal due to a lack prejudice suffered by

the defendant. *Oppelt*, 172 Wn.2d at 296. The minor victim told her great-grandmother that Oppelt had molested her. *Id.* at 287. The great-grandmother gave the victim lotion to apply to her vagina. *Id.* A nurse examined the victim and observed redness and swelling of the genitalia. *Id.* The great-grandmother reported the abuse to police a few days later, but “[t]he report never made it to the prosecutor's office.” *Id.* at 288. Six years later, the State charged Oppelt with child molestation. *Id.* at 287-88.

During Oppelt's trial, the great-grandmother was unable to recall what type of lotion she gave the victim. *Id.* at 296. The great-grandmother had developed a medical condition affecting her memory during the six year charging delay. *Id.* Oppelt argued he was prejudiced by the preaccusatorial delay because he could not discover the type of lotion that had been applied, and thus could not determine if the lotion could have caused the redness. *Id.* The Supreme Court concluded the great-grandmother's memory loss caused only “very slight prejudice” because the defendant was not precluded from arguing that the lotion caused the redness and swelling. *Id.* Therefore, while preaccusatorial delay was the result of the State's negligence, Oppelt's due process rights were not violated. *Id.*

In *State v. Gee*, 52 Wn. App. 357, 367-68, 760 P.2d 361 (1988), preaccusatorial delay did not warrant dismissal even when the State was aware a witness would be leaving the state and therefore unavailable to testify. In *Gee*, the person who set up the drug transaction between the undercover police officer and Gee was leaving for Florida shortly after the transaction occurred. *Gee*, 52 Wn. App. at 358-59, 367. The Court of Appeals noted that the witness, 1) did not likely corroborate Gee's version of events, 2) the witness would have probably invoked her privilege against self-incrimination, and finally 3) the evidence showed, even if the case had been filed immediately, it was highly unlikely the witness would have been available due to her leaving the state. *Id.* at 367. In *Gee*, the State's delay in filing was attributed to its desire to protect a confidential informant, which outweighed any prejudice that Gee may have incurred by the witness' unavailability. *Id.* at 368.

The trial court found Keen's due process rights were violated in three ways, and the cumulative effect was actual and significant prejudice. CP 81-82. Keen's due process rights were not violated and he was not prejudiced by the preaccusatorial delay. The trial court relied upon findings of fact that were not supported by substantial evidence as argued in the section above when evaluating and

applying the relevant law, this led the trial court to the erroneous conclusion that Keen suffered actual prejudice. CP 74-83.

First, the trial court found Keen suffered actual and significant prejudice by preaccusatorial delay violating his due process rights because:

Kimberly Woo and Kyle Tealge were not located by the State prior to filing this case in court almost a decade after the initial investigation began and their ability to be located and questioned by the defense was significantly compromised by the delay. Also, their testimony is highly relevant because all four relevant parties provided very different accounts of important details of the evening.

CP 81 (conclusion of law 1.2(a)). It is true the record does not support any inference that the State attempted to verify the whereabouts of Ms. Woo or Mr. Teagle immediately prior to filing charges against Keen in December 2018. See RP; CP 67-68. The record does not support that, “their ability to be located and questioned by the defense was significantly compromised by the delay.”

Keen’s trial was set for the week of March 4, 2019 but his speedy trial expiration was not until March 18, 2019. CP 79. As of February 16, 2019, Sergeant McNamara had spoken to Ms. Woo’s father and verified Ms. Woo did in fact live at 144 Hillcrest in Chehalis. CP 67. Ms. Woo was served her subpoena, therefore she was physically located prior to trial. RP 54. Mr. Aust’s investigatory

tactics used to locate Ms. Woo were to review the original incident report from 2009 and locate a phone number for Ms. Woo and her father, Tom Woo. RP 18. Mr. Aust made one attempt to call Tom Woo, without success. *Id.* Mr. Aust next attempted to call the phone number listed for Kim Woo in the 2009 incident report and did not receive a call back when he left a message. *Id.* Mr. Aust never attempted to go to the address listed on the report. *Id.*

In regards to Mr. Teagle, Mr. Aust testified, “[i]t looks like I made two attempts to contact him. And I wrote down the phone number, I believe I got that from the report.” RP 18. Mr. Aust was unsuccessful, leaving a message on a voicemail. *Id.* When asked if he made any other attempts to contact Mr. Teagle, other than calling the number in the police report, Mr. Aust stated, “It was my impression that he was out of state, if I remember correctly.” RP 18-19.

The trial court based its conclusion that the defense was significantly compromised by the delay in filing on **four phone calls**. Kyle Teagle was not in the State of Washington within one month of the incident, as all of law enforcements contacts with Mr. Teagle were while he was outside of the state. CP 35-41. Mr. Teagle had warrants when the incident occurred and was evading police. CP 36.

Mr. Teagle was in Utah when he first spoke to the police, in Hawaii when they next located him, and in Wyoming when the police finally obtained a DNA sample in 2017. CP 35-41. The delay in prosecution did not make Mr. Teagle unavailable, Mr. Teagle was unavailable on August 3, 2009 when he was the primary suspect and has remained elusive since that time. *Id.* This is not sufficient to show actual prejudice. *Gee*, 52 Wn. App. at 367.

Similarly, the defense did not show their ability to locate and question Kimberly Woo was significantly compromised by the delay. Two phone calls does not show an actual attempt to locate. Mr. Aust did not even attempt to go to Ms. Woo's last address in Chehalis listed on the police report.³ Kimberly Woo was not being cooperative with the State, but that did not mean she was not available for trial. Ms. Woo had been subpoenaed, the State could now force her compliance, if necessary, with a material witness warrant if Ms. Woo did not appear as required for trial. CrR 4.10. The State cannot force people to be cooperative witnesses, but it can compel them to testify once they are properly served.

³ The report lists, 1767 S. Market Blvd; 26, Chehalis, WA 98532. This address is 1.3 miles from the Lewis County Law and Justice Center where the Motion to Dismiss occurred (located at 345 West Main Street, Chehalis, Washington 98532), according to [google.com/maps/dir](https://www.google.com/maps/dir). (Last visited 8/1/19)

There was no real attempt to locate either witness by the defense. The trial court erroneously found Keen's due process rights were violated due to actual and significant prejudice caused by preaccusatorial delay. The delay did not significantly compromise Keen's ability to locate Ms. Woo and Mr. Teagle.

Next, the trial court found Keen suffered actual and significant prejudice by preaccusatorial delay violating his due process rights because:

The employees and/or other witnesses at the Chevron that evening were also compromised by the delay and would offer relevant evidence in that they observed the interaction of the relevant parties as well as their respective levels of intoxication.

CP 81 (conclusion of law 1.2(b)). This conclusion of law is purely speculative. It is unknown if there is anything of use by anyone at the Chevron. There is video of the parties at the Chevron that was obtained from the night in question. CP 30-31. The video does show the female store clerk exit the Chevron, go out to the Jeep, and speak with K.J.M. CP 31. K.J.M., Ms. Woo, and the clerk go into the store.
Id.

It is unclear what relevant evidence Keen believes could be offered from witnesses at the Chevron. None of the four individuals who were involved in the incident deny K.J.M. was highly intoxicated

or that they had been at a tavern drinking. CP 24-36. K.J.M. stated she passed out. CP 25. Ms. Woo stated K.J.M. passed out. CP 26. In another statement, Ms. Woo said K.J.M. vomited profusely, then passed out. CP 28. Keen said K.J.M. vomited and passed out. CP 32. Finally, Mr. Teagle said K.J.M. “was pretty drunk and was sleeping.” CP 36. It is not contested the parties were intoxicated. The inability to obtain the store clerk’s statement, which may or may not be relevant is not actual and significant prejudice violating Keen’s due process rights caused by preaccusatorial delay. The trial court erred when it made this conclusion of law.

Third, the trial court found Keen suffered actual and significant prejudice by preaccusatorial delay violating his due process rights because:

Wendy Johnson’s location and availability were also compromised irreparably due to the pre-accusatorial delay, and information she would provide in advance of trial and at trial would be relevant beyond merely foundational issues in that she was the only person who interviewed the alleged victim during the rape kit process, she used certain protocols to obtain critical evidence in the case, and she obtained and retained critical evidence in the case.

CP 81-82. The State cannot deny the delay in time had made locating RN Johnson difficult. The State disputes this difficulty causes Keen to suffer actual and significant prejudice. RN Johnson

collected the rape kit evidence from K.J.M. CP 25-26. Without RN Johnson, the State will not be able to admit the DNA evidence, as it will not be able to meet the bare minimum foundational requirements or show the evidence met the relevance requirement for admissibility. ER 401; ER 901(a). Therefore, the State has prejudiced its own case by the delay by possibly losing the ability to present one of its strongest pieces of evidence. The trial court erroneously concluded Keen suffered actual and significant prejudice from the loss of RN Johnson, in actuality Keen benefits from this loss.

Therefore, for the reasons argued above, conclusion of law 1.4 “[t]he cumulative effect of all the loss of evidence in 1.2 constitutes actual and significant prejudice” is erroneous. If individually, conclusions of law 1.2(a), 1.2(b), and 1.2(c), are not actually prejudicial to Keen, the cumulative effect, is also not prejudicial. There is no prejudice suffered from 1.2(c), Keen benefits from the loss of RN Johnson and the State’s inability to admit the DNA evidence. Kyle Teagle was not lost due to the delay, he was not present in the state during the investigation. Kimberly Woo is present, she is simply choosing to make herself unavailable, and this

is not caused by the delay. Therefore, Keen does not suffer actual prejudice and there is no cumulative effect of 1.2.

Therefore, because Keen did not suffer actual and significant prejudice, the court should not have continued on to the next step of the three step test. While the delay was negligent, the State conceded such, the trial court erroneously conducted the balancing test. Keen failed to satisfy the first prong of the analysis, to show actual prejudice due to preaccusatorial delay which would justify the trial court dismissing his case for violation of his due process rights. *Potter*, 68 Wn. App. at 43. This was Keen's burden and the query should have ended there. This Court should reverse the trial court's order dismissing the State's case with prejudice for violating Keen's due process rights by preaccusatorial delay. This case should be remanded back to the trial court with order to allow the State to reinstate its prosecution of Keen for Rape in the Second Degree.

B. THE TRIAL COURT ERRED WHEN IT DISMISSED KEEN'S CASE FOR GOVERNMENTAL MISMANAGEMENT PURSUANT TO CrR 8.3(b).

The preaccusatorial delay did not amount to governmental mismanagement warranting dismissal of Keen's case. The trial court abused its discretion when it dismissed Keen's case and this Court should reverse and remand the matter back to the trial court to allow

for the reinstatement of the prosecution of Keen.

1. Standard Of Review.

A trial court's dismissal of charges pursuant to CrR 8.3(b) is reviewed for abuse of discretion. *State v. Rohrich*, 149 Wn.2d at 654. The reviewing court must affirm a trial court's dismissal if the Defendant raised and proved sufficient grounds for dismissal pursuant to CrR 8.3(b), even if the trial court based its dismissal on inappropriate grounds. *Id.*

"A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds." *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003), *citing State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). This Court will find a trial court abused its discretion "only when no reasonable judge would have reached the same conclusion." *State v. Rodriguez*, 146 Wn.2d 260, 269, 45 P.3d 541 (2002) (internal quotations and citation omitted).

2. The Trial Court Abused Its Discretion When It Granted Keen's Motion To Dismiss With Prejudice Pursuant to CrR 8.3(b).

No reasonable judge would have dismissed Keen's case with prejudice for governmental mismanagement predicated on the preaccusatorial delay for the reasons argued above. The trial court

found the governmental mismanagement prejudiced Keen's right to a fair trial due to the State's failure to produce the evidence. CP 82. Keen, the trial court reasoned, would be forced to choose between his right to a speedy trial and his right to properly defend himself. CP 82-83.

The criminal rules allow for the trial court to dismiss the State's case under limited circumstances, one such circumstances is CrR 8.3(b). The rule states:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

CrR 8.3(b). A dismissal of charges pursuant to CrR 8.3(b) is an extraordinary remedy. *Rohrich*, 149 Wn.2d at 653. "We thus conclude that dismissal under CrR 8.3(b) for governmental misconduct or arbitrary action resulting in a delay in charging requires a showing of actual prejudice." *Id.* at 658.

For the reasons argued above, Keen failed to meet the required showing he suffered actual prejudice. The delay did not cause Mr. Teagle to be unavailable, the witness at the Chevron was not critical and the possible relevance was speculative, and the absence of RN Johnson was beneficial for Keen. Finally, in regards

to Kimberly Woo she was physically present in Chehalis, as she had been served her subpoena. Ms. Woo was simply choosing to not make herself available to the prosecution and the defense, something that would likely have to be remedied by a material witness warrant.

There was no actual prejudice due to the State's delay in filing charges which caused Keen to then have to choose between his right to a speedy trial and his right to properly defend himself against the charges. As argued, there was no actual prejudice because the delay did not impact the defense to a level necessary to cause actual prejudice. Further, the trial court improperly based its ruling on Keen's counsel's representation he could not be ready to proceed in 10 days, the current trial date, therefore his client would be forced to waive speedy trial. RP 51, 64; CP 82-83. Yet, Keen still had 24 days of speedy trial remaining, almost one third of his allowed time for trial under the court rule, as his speedy trial expiration was March 18, 2019. CrR 3.3(b); CP 79.

Keen did not suffer actual prejudice from the preaccusatorial delay caused by governmental mismanagement. Keen still had 24 days before his speedy trial expired, there was no "*Hobson's choice*" at this point in the proceedings. Keen's right to a fair trial was not

materially affected. It was manifestly unreasonable for the trial court to conclude that government mismanagement of the case prejudiced Keen's right to a fair trial, thereby requiring dismissal of the charges with prejudice. This Court should reverse the trial court's dismissal, as the extraordinary remedy was not warranted, and remand the case back to the trial court to allow the State to reinstate the charges and pursue its prosecution of Keen.

V. CONCLUSION

The trial court erroneously entered several findings of fact that were not supported by substantial evidence. These findings, in part, were relied upon when the trial court made its erroneous conclusions of law. The trial court erroneously concluded Keen suffered actual prejudice from preaccusatorial delay, thereby warranting dismissal of his case with prejudice. Keen did not meet his burden to show he was actually prejudiced by the delay and this Court should reverse the trial court's ruling. The trial court similarly erred when it concluded governmental mismanagement forced Keen to choose between his right to a fair trial and his speedy trial right. The trial court abused its discretion when it dismissed the State's case with prejudice pursuant to CrR 8.3(b) and this Court should reverse the trial court. This Court

should remand Keen's matter back to the trial court to allow the State to reinstate its prosecution of Keen for Rape in the Second Degree.

RESPECTFULLY submitted this 2nd day of August, 2019.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

by: _____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

Appendix A

Findings of Fact and Conclusion of Law

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SUPERIOR COURT
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Findings of Fact and Conclusions of Law
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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIEL KEEN,

Defendant.

No. 18-1-00889-21

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDERS RE: MOTIONS TO
DISMISS ON DUE PROCESS GROUNDS
AND PURSUANT TO CrR 8.3(b)

On February 22, 2019, the Court held a hearing on Defendant's Motions to Dismiss on Due Process grounds for pre-accusatorial delay and pursuant to CrR 8.3(b) for government mismanagement. The Defendant was present and represented by attorney Shane O'Rourke and the State was present and represented by Deputy Prosecuting Attorney Silvia Irimescu.

The Court had previously read the Defendants' Motions and Briefs, the State's Response Brief, and had reviewed the court file. At the hearing, the Court considered testimony from defense investigator Steven Aust, Chehalis Police Sergeant McNamara, and considered the exhibits admitted into evidence as well as the police reports in this case that were submitted in briefing and adopted by both parties.

The Court now makes the following Findings of Fact, Conclusions of Law and Orders granting Dismissal with Prejudice of the case on both grounds submitted to the Court by the Defendant.

Page 1 of 10

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDERS.

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FINDINGS OF FACT

1.1 On July 4, 2009, the Defendant was out during the evening/late night at the Hub Tavern in Centralia, Washington along with his then friend Kyle Teagle, and they eventually connected and began spending time with the alleged victim Katie McGinnis and her then friend Kimberly Woo.

1.2 In the late evening/early morning hours, the aforementioned group of four left the tavern in a vehicle together, driven by Ms. McGinnis, and traveled to the nearby Chevron gas station where they all exited the vehicle at various points and had interactions with other people at the gas station.

1.3 Ultimately, Ms. McGinnis decided not to drive the group the rest of the way to the women's residence as she believed she was too intoxicated to drive, and the Defendant agreed to drive the group the rest of the way.

1.4 The group eventually reached the residence in Chehalis and during the trip to the residence and thereafter, numerous events are alleged to have transpired. However, the Court does not make findings as to these events as the additional findings relevant to these Motions relate only to the time that a report was made to law enforcement and beyond.

1.5 On July 5, 2009, Ms. McGinnis contacted the Chehalis Police Department and reported that she believed she had been raped while she was unconscious/"blacked out" due to alcohol consumption. As a result, law enforcement began the investigation giving rise to this case.

1 1.6 The Chehalis Police Department (hereinafter "CPD") interviewed Ms. McGinnis
2 multiple times, including her primary initial interview and a later contact with
3 then Detective Rick Silva who died years later but years before this case was
4 charged.
5

6
7 1.7 The CPD went to the Hub Tavern and attempted to obtain video, but learned
8 that no video existed. No witness statements were taken from anyone at the
9 tavern other than the four aforementioned involved parties.
10

11 1.8 The CPD obtained surveillance video from the Chevron, but no formal
12 statements (other than the conversations to obtain video) were obtained from
13 anyone at the Chevron.
14

15 1.9 The CPD used the video to identify the two men who were involved, the
16 Defendant and Kyle Teagle, in addition to Ms. McGinnis and Kimberly Woo,
17 who they had already identified.
18

19 1.10 The CPD interviewed all four of the aforementioned individuals and all four
20 individuals made statements that while similar in some regards, were very
21 different in significant ways, including on the issues of the social interactions
22 between the parties that evening and alleged sexual contact.
23

24
25 1.11 Based upon the investigation to that point, the CPD determined that Kyle
26 Teagle was their "primary" suspect, but that the Defendant was also a suspect
27 from the very beginning of the investigation.
28
29
30

1 1.12 Early in the investigation, Ms. McGinnis went to Centralia Providence
2 Hospital and a rape examination was performed and a rape kit including DNA
3 swabs were taken from Ms. McGinnis by Wendy Johnson. The rape kit was
4 eventually picked up by the CPD and placed into evidence for potential DNA
5 comparison at a future date.
6
7

8 1.13 The CPD wanted to obtain a DNA sample from Kyle Teagle as their primary
9 suspect, but they were unsuccessful in doing so as he had left the state after
10 being interviewed due to reasons unrelated to the investigation.
11

12 1.14 The CPD asked the Defendant for a voluntary DNA sample for comparison
13 to the rape kit, which the Defendant denied.
14

15 1.15 In 2009 and as the investigation continued into 2010, the police had
16 probable cause to obtain a warrant for the Defendant's DNA (which they would
17 eventually do in 2017), but failed to obtain such a warrant, which resulted in
18 the Defendant's DNA not being compared to the swabs until 2017.
19

20 1.16 In his testimony, Sergeant McNamara agreed that the CPD should have
21 obtained a warrant for the Defendant's DNA and had they done so in 2010, the
22 case would have been brought to court many years sooner.
23
24

25 1.17 In the Spring of 2010, without any DNA comparison having occurred, and
26 without any additional investigation occurring, Sergeant McNamara rotated
27 into another role in the CPD and the case was left alone. Nothing was done
28 with the case between 2010 and 2017.
29
30

1 1.18 In July of 2017, the CPD began to look at the case again.

2
3 1.19 On August 31, 2017, the CPD obtained a DNA sample from Kyle Teagle
4 and sent it to the crime lab for comparison to the original rape kit DNA swabs.

5
6 1.20 On October 2, 2017, the CPD received results back from the crime lab
7 which indicated Kyle Teagle's DNA was not a match.

8
9 1.21 On October 5, 2017, the CPD obtained a warrant for the Defendant's DNA
10 and subsequently obtained his DNA and sent it to the crime lab for comparison.

11 1.22 On November 27, 2017, the CPD received results back from the crime lab
12 which indicated that the Defendant's DNA matched the swabs from the rape
13 kit and the case was forwarded to the Prosecutor.

14
15 1.23 Between November 27 and December 29, 2017, the Prosecutor and the
16 CPD had communication where the Prosecutor requested the CPD to locate
17 and contact the alleged victim and see if she still wanted the case prosecuted.
18 This was accomplished and the case was sent for charging at the end of 2017.
19

20
21 1.24 The case was filed on November 8, 2018.

22 1.25 The Defendant was summoned to appear for a preliminary appearance on
23 December 18, 2018.

24
25 1.26 The Defendant retained counsel Shane O'Rourke who filed a Notice of
26 Appearance and Demand for Discovery on December 11, 2018.
27
28
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30

1 1.27 The Defendant appeared in court on December 18, 2018 for preliminary
2 appearance and also for arraignment and trial setting. As a result, speedy trial
3 was March 18, 2019 and trial was scheduled for the week of March 4, 2019.
4

5 1.28 In early January of 2019, defense investigator Steve Aust was
6 communicating with the defense regarding a potential due process motion for
7 dismissal due to prejudice resulting from pre-accusatorial delay.
8

9 1.29 On January 9, 2019, defense investigator Steve Aust began his
10 investigation in an effort to locate critical witnesses and evidence in the case
11 necessary to the defense, and, if he could not find such witnesses or evidence,
12 to produce a report regarding his conclusions and explanation as a former law
13 enforcement officer of 20 years as to why the defense would be prejudiced.
14

15 1.30 During the pendency of the case, defense counsel Shane O'Rourke was in
16 communication with the State discussing the issues including issues related to
17 the location of critical witnesses. During the pendency of the case, the State
18 did not locate Kyle Teagle or Wendy Johnson. The State, through law
19 enforcement, served Kimberly Woo with a subpoena, but could never
20 physically locate her or contact her by phone.
21

22 1.31 At an Omnibus hearing on January 31, 2019, based on the investigation
23 that had occurred to date, the Defendant filed a Motion to Dismiss the case on
24 Due Process grounds and pursuant to CrR 8.3(b).
25
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1 1.32 On February 6, 2019, Investigator Aust provided his report to the defense
2 and on February 8, 2019, the defense filed its brief. On February 14, 2019, the
3 defense filed a supplemental brief with additional information obtained by
4 Investigator Aust who continued to work on the case.
5

6
7 1.33 On February 22, 2019, this motion hearing was held and the Court heard
8 testimony from Investigator Aust and Sergeant McNamara.
9

10 1.34 Investigator Aust testified as to the urgency of his investigation and the
11 nature of it and testified that he did the following: he made efforts to locate
12 and/or contact Kimberly Woo and Kyle Teagle, but like the State, he was
13 unsuccessful; he contacted employees of the Hub Tavern to attempt to locate
14 witnesses or employees who were present on the evening in question in this
15 case, but was unsuccessful; he contacted the Chevron and attempted to locate
16 the employees who saw the relevant parties on the evening in question but
17 was unsuccessful; he canvassed the neighborhood where this crime allegedly
18 occurred for witnesses but was unsuccessful; he determined that Detective
19 Silva who was deceased had not written a report about his interview with the
20 alleged victim; he contacted Providence Hospital multiple times and they could
21 not locate Wendy Johnson who took the rape kit; and he provided testimony
22 about the Defendant's lack of memory ten years removed from the case.
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1 1.35 Sergeant McNamara testified consistent with the police reports and agreed
2 with the recent email he wrote that is in evidence in that he should have
3 obtained the Defendant's DNA in 2010 and there was no reason for the delay
4 in the case other than that it happened.
5

6
7 **CONCLUSIONS OF LAW**

8 1.1 There was a five-year pre-accusatorial delay in the case, for no reason.

9 1.2 That pre-accusatorial delay caused actual and significant prejudice to the
10 Defendant and violated his due process rights in that:
11

12 a) Kimberly Woo and Kyle Teagle were not located by the State prior to filing
13 this case in court almost a decade after the initial investigation began and
14 their ability to be located and questioned by the defense was significantly
15 compromised by the delay. Also, their testimony is highly relevant because
16 all four relevant parties provided very different accounts of important
17 details of the evening.
18

19
20 b) The employees and/or other witnesses at the Chevron that evening were
21 also compromised by the delay and would offer relevant evidence in that
22 they observed the interactions of the relevant parties as well as their
23 respective levels of intoxication.
24

25 c) Wendy Johnson's location and availability were also compromised
26 irreparably due to the pre-accusatorial delay, and information she would
27 provide in advance of trial and at trial would be relevant beyond merely
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1 foundational issues in that she was the only person who interviewed the
2
3 alleged victim during the rape kit process, she used certain protocols to
4 obtain critical evidence in the case, and she obtained and retained critical
5 evidence in the case.

6
7 1.3 The potential loss of witnesses at the tavern, the loss of Detective Silva, the
8 potential loss of witnesses in the neighborhood, and the loss of memory of
9 witnesses generally including the Defendant do not constitute prejudice.

10
11 1.4 The cumulative effect of all of the loss of evidence in 1.2 above constitutes
12 actual and significant prejudice.

13 1.5 The State and law enforcement can offer no reason for the significant pre-
14 accusatorial delay and the delay was clearly negligent.

15
16 1.6 In weighing the reason for the delay, that there was none, and the prejudice,
17 the Court determines that this balancing test falls squarely in favor of the
18 Defendant in that fundamental concepts of justice would not be met if the case
19 was allowed to proceed.

20
21 1.7 Under CrR 8.3(b) analysis, the government committed governmental
22 mismanagement of its case for the reasons stated above and offered no
23 reasonable explanation for the delay.

24
25 1.8 This government mismanagement of the case has prejudiced the Defendant's
26 right to a fair trial in that given the current speedy trial and current trial date as
27 well as the enormity of the charge and evidence that still to date cannot be
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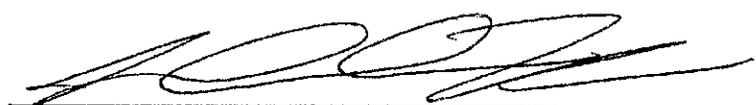
1 produced due to pre-accusatorial delay, the Defendant would be forced to face
2 a *Hobson's choice* between his right to properly defend himself and his right
3 to a speedy trial.
4

5 **ORDERS**

6
7 1.1 The case is dismissed with prejudice for due process violations due to pre-
8 accusatorial delay which caused actual prejudice to the Defendant and for which no
9 reason was provided that justifies the case proceeding.

10
11 1.2 The case is dismissed with prejudice for governmental mismanagement of the case
12 for which no reason was provided that prejudiced the Defendant's right to a fair trial.
13

14 DATED this 13 day of March 2019.

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18 
19 SUPERIOR COURT JUDGE

20
21 Presented by:
22 
23
24 SHANE O'ROURKE, WSBA 39927
25 Attorney for Defendant

26
27 Copy received; Approved as to form:
28 
29
30 SILVIA IRIMESCU
Deputy Prosecuting Attorney

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDERS.

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

August 02, 2019 - 3:25 PM

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Appellate Court Case Title: State of Washington, App/Cross-Respondent v. Daniel L. Keen, Resp/Cross-Appellant
Superior Court Case Number: 18-1-00889-6

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